

LITCHFIELD ZONING BOARD
TOWN OF LITCHFIELD, NEW HAMPSHIRE
MARCH 11, 2009

ZBA Members Attending (Indent if Absent):

Richard Riley, Chairman

Laura Gandia, Vice Chairman

John Regan

Albert Guilbeault

Tom Cooney, Clerk

Gregory Lepine (alternate)

John Devereaux (alternate)

Eric Cushing (alternate)

John Brunelle (alternate)

I. Call to Order

- Richard Riley calls the meeting to order at 7:03 pm.
- Mrs. Gandia takes attendance.
- Richard Riley appoints Greg Lepine and John Devereaux to the Board.

II. New Applications

There are no new applications.

III. Case Review

Case#2009-01

Applicant's name: Attorney Morgan Hollis on behalf of MDP Mgmt., Inc.

Location of Property: 27 Cutler Road, Tax Map 2, Lot 128.

Applicant input:

Attorney Morgan Hollis spoke regarding the application on behalf of MDP Management, Inc. regarding property located at 27 Cutler Road, Tax Map 2, Lot 128. They are requesting:

- 1.) A special exception under Litchfield Zoning Ordinance 1208 to allow an access driveway within the wetlands conservation district. The proposed driveway encroaches into the 50 foot wetland buffer.
- 2.) A variance under LZO 901 to allow a single family residence in a transitional zone.

Mr. Hollis provided board with a visual outline of the proposed plan. Mr. Hollis explained to the board exactly what the applicants would like to do with the property.

Mr. Hollis makes a point that the surrounding areas to the lot are zoned residential. He also stated that a residence on this lot would be the best use of the property. He then covered all the points to the special exceptions. (Copy given to Board Members).

Mr. Hollis introduced Tony Marcotte who is a former employee of Bedford Design and is currently employed by MDP Management ; and Jeff Pantara who is a wetlands scientist/biologist.

Mr. Hollis then explains proper ownership of each parcel of land to avoid confusion and turns meeting over to Tony Marcotte.

Mr. Marcotte stated that he worked on the design for the proposed driveway. (Distributed handout to Board for record). States the proposed use will not unduly restrict the flow of water. He also stated there would be no danger to any species in wetlands by the construction of the proposed driveway.

Jeff Pantara spoke regarding wetlands issues. Mr. Pantara had accessed the subject property on five separate occasions working as a wetlands biologist. (Presented the Board with opinion letter from his 2007 visit to property for the record). Stressed wetlands are seasonally saturated and contain no threatened plant or animal species.

Mr. Riley questions Jeff Pantara about his use of the plural word "culverts" when the design only shows one? Jeff corrects himself to state only one culvert is being proposed. Jeff explains they would consider adding more culverts if the conservation commission or the abutters would feel more happy with that.

Laura Gandia asks where the closest spot to the wetlands exists for the driveway and Jeff answers 10 feet. Rick Riley states this information is not on original application. Mr. Riley makes a point that entire driveway is in the buffer zone. Mr. Hollis confirms that the proposed driveway sits entirely inside the buffer zone for the majority of the approximately 600ft proposed driveway. Up close to the house is the only area where the driveway is not within the buffer zone.

Mr. Hollis then summarizes on special exception

- a. It is essential to have use of land not so zoned; only way to access land is by the input of the driveway;
- b. Precautions have been taken to minimize any detrimental impact to surrounding areas.

Mr. Riley reads the application to entire room.

Mr. Riley makes a motion to ask for public input.

Greg Lepine seconds

*The Board votes 5-0 in **favor** of public input.*

Public Input:

Mr. Riley acknowledges that there was representation from the conservation committee present. Mr. Riley explains that the Board will allow the Conservation Committee to speak first and then the Board will hear from the abutters.

(1) Thomas Levesque and Sharon Jones from the Conservation Commission.

Laura Gandia reads letter from Litchfield Conservation Commission and gives copy to Atty. Morgan Hollis.

The members from the conservation commission recommended that a site walk be performed before any decision is made. The Commission is concerned about the destruction of certain trees with regard to Mr. Guibeault's property and that quite a bit of fill would be needed for the area. Commission feels that if the application was to be approved then there are some precautions to be taken to protect the wetlands. Mr. Riley points out that the letter from the conservation committee is not specific about whether they support the applicant's request or oppose it. Mr. Levesque responds that this request has been going on for a long time and their opposition is already a matter of record.

Mrs. Gandia points to a reference about flood storage concerns and asks for further clarification. Tony Marcotte states there is plenty of flood storage.

Mr. Riley asks if there is anyone who would like to speak in favor of the proposed driveway, no one steps forward to speak in favor.

Mr. Riley then asks if there is anyone who would like to speak against the proposed driveway.

(2) Albert Guilbeault
23 Cutler Road (owned property since 1999)

Mr. Guilbeault is concerned as the wetlands abut his property. His house sits low and he stated that the excess water would seep into his basement. Also, the trees to be removed to accommodate this driveway are on his property. Mr. Guilbeault presented pictures to the board and a letter from his attorney. He claims proposed driveway is located in a 1A flood zone and also contends that there is living wildlife in the entire area. . Mr. Guilbeault also stated that the removal of trees would be a significant problem since the current trees and vegetation prevent more water from seeping onto his property. Told the board some of the trees are 50 years old and would be difficult to replace.

Mr. Riley explains that not all of the information contained in the attorney letter is relevant to the special exception. *Laura Gandia reads a portion of the letter from Attorney's Kate and Brown which speaks directly to the applicant's request for a special exception.*

(3) Kathy Messier
MAP 2 Lot 80

Ms. Messier states her property has very low elevation and has consistent water. She also gives permission to have her lot surveyed. She presented the board with photographs of her property. Her concern is that the excess water created by this project would cause her severe damages. She also contests that there are far more species of wildlife on the premises than the experts have acknowledged and presented the board with multiple photo's to demonstrate this point.

(4) John Pierog
MAP 2 Lot 79 19 Cutler Road

Mr. Pierog states his yard and basement are wet year round (presented pictures to board). He also claims the wildlife is fluent and he has several owls and frogs in his yard. He is concerned with the excess back up of water to his property. Mr. Pierog also added that his leech field had to be replaced and his property had to be raised six feet higher to accommodate the new leech field.

(5) Leon Barry
17 Cutler Road (also owns most of land in back)

Mr. Barry said all the land in the entire area is swamp land. He is also concerned about more water on his land as the current drainage is a big problem. He would also like to see the board do a site walk on this property in the spring. States that even on rainy days the roads flood. Mr. Barry also points out the Mr. Marcotte is currently employed by the applicant and even though Mr. Marcotte was not employed by the applicant at the time he did the site survey he still feels this is a conflict of interest.

(6) Tom and Jennifer Chacos
25 Cutler Road

Mr. & Mrs. Chacos are very concerned as their lot would definitely flood with the construction of the proposed driveway. They have had a constant flooding problem with their home and feel this driveway will create more water issues. Jennifer Chacos went on to state that her leech field and wells would be affected by the increase in the water table. Her leech field is only 15 to 20 feet from her house.

Rebuttal Points:

Attorney Hollis asked the board to review the criteria. Criteria states you need to prevent destruction of wetlands and because they are not filling in any wetlands then there will not be any destruction. Cannot promise no change to wetlands, just the precautions taken to prevent this. He feels all criteria have been met by the proposal.

Jeff Pantara states the area was surveyed in 2005 and 2006 and showed only a single egg mass and felt there was no threat to any vernal pools. He stated the term wetlands in the state of NH must meet 3 criteria; one preponderance of wetlands species; second is

chemical characteristics; and third is soil saturation. His final point is this driveway does not change any wetlands.

Tony Marcotte wanted to say that his testimony is completely professional and not bias in any way.

Albert Guilbeault would like to table issue for now to determine the outcome of a property line dispute and that he has hired an attorney to represent him in this dispute.

Mr. Riley stated that even if the special exception was approved, abutters can still appeal.

Mr. Hollis indicates that the dispute is a civil matter and should not influence the ZBA hearing of this case.

John Devereaux makes a motion to postpone decision until ZBA can do a site walk of the property.
(BOARD DISCUSSION)

John Devereaux withdraws first motion and makes a new motion to defer the special exception for the driveway Case#2009-01 until the May meeting to allow ZBA to do site walk of the property.

Greg Lepine seconds. Public Notice will be posted.
*The board votes 5-0 in **favor** of motion.*

Rick Riley proposes a motion to close public input.
Greg Lepine seconds motion.
*The Board votes 4-1 in **favor** of motion.*

Applicant input on second issue before the board:

Attorney Morgan Hollis spoke once again regarding the application on behalf of MDP Management, Inc. regarding property located at 27 Cutler Road, Tax Map2, Lot 128 to seek a variance under LZO 901 to allow a single family residence in a transitional zone. States this is a use variance application. Zone line exists at the border of the property. Mr. Hollis presented criteria to board. Attorney Hollis points out entire surrounding area is residential and states entire area is inappropriately zoned. He feels the lot in question has a unique shape and there is no rational connection to the general purpose of the ordinance. Presented board with permitted uses of property under transitional zone which he feels would be more detrimental to the neighborhood. He feels putting a residence on the lot would be the best use of the property. Mr. Hollis presented the board with an opinion letter from RG Bramley, Appraiser, who agrees with Attorney Hollis that a residence would be the best use of the property and result in less vehicle traffic.

Mr. Riley asks Mr. Hollis if he had written copies of his statements addressing the criterion for granting the variance so that it could be placed into the record. Mr. Hollis responded that he did not. Mr. Riley explained that this would have been helpful to all

members of the ZBA and it was unfortunate not to have something we could reference during deliberations. Mr. Riley feels that Mr. Hollis did not present any real reasoning why zoning should be changed. Just simply stating that surrounding areas are zoned residential does not necessarily mean transitional zone not appropriate. Mr. Riley reiterates that the lines are there for a reason. Mr. Hollis once again points out on the site map that this particular lot is unique and is inappropriately zoned.

Rick Riley makes a motion to reopen public input since both the special exception and the variance are the same case number and that the public must be allowed to speak about this part of the case.

Greg Lepine seconds.

The board votes 5-0 in **favor** of reopening public input.

Rick Riley asks for all those in favor of variance to speak. No one in favor.

Mr. Riley then asks if there is anyone who would like to speak against the variance.

Public Response:

Albert Guilbeault
23 Cutler Road

Feels this is not a unique piece of property and does not think the transition line should be changed. Surrounding areas have issues with wetlands. Mr. Guilbeault pointed out another lot close by which is similarly situated between residential lots which is also zoned transitional. Mr. Guilbeault also referred back to the town Map which showed the entire area behind the abutter's is zoned either transitional or commercial. Mr. Guilbeault presented the board with a letter from a Real Estate Agent for the lot which is under review in this case. The letter clearly states that the lot in question sits inside the transitional zone and that residential use is restricted. Mr. Guilbeault states this clearly shows that the owner of property knew this could not be used for residential before purchase of lot. Mr. Riley asked if Mr. Guilbeault knew with certainty that the applicant had seen this letter. Mr. Guilbeault responded that he and all the abutters were approached by the real estate broker trying to sell the property and that yes, he feels confident that the applicant was presented with the same letter. Other abutters spoke up to confirm they had been presented the same letter by the real estate agent. Greg Lepine suggested this was not relevant and Mr. Riley countered that it would be relevant if it showed that the applicant had prior knowledge then this becomes a self imposed hardship.

(7) John Pierog
Lot 79 19 Cutler Road

Questioning board on whether they are changing entire transitional zone. The board states they are not changing the transitional zone just granting a possible variance for this lot.

Rebuttal:

Attorney Hollis reiterates that this property is unique.

Laura Gandia makes a motion to close public input.

Greg Lepine seconds.

*The Board votes 5-0 in **favor** of motion.*

BOARD DELIBERATES.

John Regan reads point one: No decrease in the surrounding properties would be suffered. He agrees with this point. Laura Gandia states the home fits the character of a residential neighborhood. Mr. Riley agrees.

As far as granting the variance would be contrary to public interest, John Regan does not think this variance would be contrary as a residence would be compatible with surrounding areas. John Devereaux feels a business would be more contrary to public interest. Mr Riley stated that he is not inclined to re-draw the zoning because the transitional zone has to start somewhere and the lines are quite clear in this case as this is not a split lot. Mr. Riley feels that the intent for having a transitional district is to promote jobs and it also has a positive impact on the tax base. Mr. Riley asks the board where they stand on this issue as he personally feels it does not pass the test on this issue. The board is generally in support of the applicant. Mr. Riley then suggests to move on to the next question.

As far as reasonable use of the lot, John Devereaux feels given the uniqueness of the property it would probably not be used as transitional. Mr. Devereaux also mentions traffic issues as a business would bring in much more traffic. John Regan feels a residence would be a very reasonable use and makes much more sense. Mr. Riley does not necessarily agree as the property could be used for a host of difference uses which would be compatible with the current zoning. The board continues to discuss whether the variance would injure the public or private rights of others. John Regan does not feel that the granting of the variance would injure the public or private rights of others.

Board also discusses the best interest of the property. Mr. Riley asks "what is the true best interest of the property." Board looks through materials for definition.

John Reagan reads: By granting the variance substantial justice would be done. Board discusses.

Last point discussed was that the contemplated use would not be contrary to the spirit of the ordinance as the property was zoned for transitional purposes. John Devereaux mentions that either way they vote the end result is that a building will be built. Mr. Devereaux states that he feels that there are numerous uses that would be compatible with the zoning and that the property is not unique because there is another lot close by which is also zoned transitional. Mr. Riley agrees with Mr. Devereaux on those points.

Laura Gandia makes a motion to grant variance on Case 2009-01, tax map 2, lot 128.

John Regan seconds.

*Board approved **3 to 2** – Motion carries. (Refer to Notice of Decision Document)*

IV. Miscellaneous Business

- Meeting minutes.

*Laura Gandia makes a motion to **accept** the January meeting minutes.*

Greg Lepine seconds the motion.

*The board votes **in favor** of **accepting** the meeting minutes, **5-0**.*

V. Adjournment

John Regan makes a motion to adjourn.

Greg Lepine seconds the motion.

*The board votes **in favor** of adjourning at 10:46pm, **5-0**.*

*Respectfully submitted,
Karen McCloskey*